

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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ANDRE T. McCANTS,

Petitioner,

DECISION AND ORDER

00-CV-6444L

v.

JOSEPH McCOY,

Respondent.

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Petitioner, Andre T. McCants (“McCants”), filed a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254 challenging his conviction, on a guilty plea to criminal possession of a controlled substance in the fifth degree. This Court referred the petition for a Report and Recommendation to United States Magistrate Judge Victor E. Bianchini pursuant to 28 U.S.C. § 636(b). Magistrate Judge Bianchini reviewed the petition and all filings in the case and issued a thorough Report and Recommendation (Dkt. #35) recommending that McCants’ petition be denied and the petition dismissed. McCants, who has now apparently been released from state custody, failed to file any objections to the Report and Recommendation.<sup>1</sup>

Although no objections have been filed, I have carefully reviewed the case and Magistrate Judge Bianchini’s Report and Recommendation. Magistrate Judge Bianchini carefully summarized the rather tortured procedural history of the case as well as the merits of the petition which raised

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<sup>1</sup>Not only has McCants failed to file any objections but he has also failed to keep this Court apprised of his current address pursuant to Local Rule 5.2(d). Although Magistrate Judge Bianchini declined to so rule, failure to provide the Court with updated residence information could result in dismissal of the case.

issues concerning the voluntariness of McCants' guilty plea and issues of ineffective assistance of counsel. McCants also asserts Fourth Amendment violations.

Magistrate Judge Bianchini carefully considered the facts and the relevant law relating to such allegations. I, therefore, see no basis to repeat and cover the matters so carefully discussed by the Magistrate Judge. I find no basis to modify or reverse his findings and conclusions of law. I adopt the Report and Recommendation in its entirety. The petition should be dismissed for the reasons set forth in the Report and Recommendation.

#### CONCLUSION

I accept and adopt the Report and Recommendation (Dkt. #35) of United States Magistrate Judge Victor E. Bianchini. The petition for habeas corpus release of Andre T. McCants is denied and the petition is dismissed. Furthermore I decline to issue a certificate of appealability because McCants has failed to make a substantial showing of the denial of a constitutional right. 28 U.S.C. § 2253(c).

IT IS SO ORDERED.

A handwritten signature in black ink, reading "David G. Larimer", is written over a horizontal line.

DAVID G. LARIMER  
United States District Judge

Dated: Rochester, New York  
November 5, 2008.